

Notice of Regulatory Review;
70 Fed. Reg. 3761 (January 26, 2005)

DATED: July 20, 2005

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Notice of Regulatory Review;
70 Fed. Reg. 3761 (January 26, 2005)

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) Docket No. OST-2005-20112
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DATED: July 20, 2005

SUPPLEMENTAL COMMENTS OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following supplement to the Final Comments filed by United on April 29, 2005, in the captioned proceeding:

1. In its Final Comments (pp. 6-8) United cited the need for a reform of the regulatory mindset that seems to prevail at DOT, noting the growth of the tangled web of code-share service regulations as an example of why such reform is needed. Since the submission of these Final Comments, United has become aware of another example of the regulatory "creep" that seems to prevail at DOT notwithstanding the undertaking in this proceeding to eliminate this sort of unnecessary and burdensome regulation.

2. Earlier this year (but after the DOT's regulatory review notice had been published) a Chinese-flag carrier filed an application for exemption authority to operate services behind its Chinese gateway point (Shanghai) to other points in China, namely Shenyang and Shenzhen, on flights that also served the U.S. It was clear that all services originating or terminating in Shenyang or Shenzhen would operate via Shanghai as the gateway point in China (Docket OST-2005-20561). More recently, the same carrier filed another application for similar authority for services behind Shanghai to Dalian and Chengdu (Docket OST-2005-21810).

United has no objection to the Chinese carrier's proposed service and did not want to delay it by filing answers with the Department. United questioned the need for this authority in communications to the carrier's counsel. On the occasion of the second filing, we were advised that DOT staff had told them that exemption authority was required to offer these behind-gateway services. When we contacted DOT staff, this position was confirmed. It was explained that because the foreign carrier was offering "single flight number" service between the U.S. and the behind gateway points in China, the carrier required specific exemption authority from DOT to operate over those internal Chinese sectors.

3. This is another example of an unnecessary and legally questionable extension of DOT's jurisdiction over operations outside of its territory. It is also inconsistent with previous interpretation of the laws applying to such service. *See, e.g.*, 59 CAB 87, 92 (1972) ("Under established international practice, a carrier is permitted to operate beyond its gateway to any point in its homeland on its existing route system.") Moreover, the DOT's reinterpretation of the regulatory requirements for foreign carrier behind-homeland-gateway services has implications for U.S. carriers as well. If the U.S. is to require DOT operating authority for such foreign carrier services, foreign governments may also require U.S. carriers to do so.^{1/}

4. The "policy" underlying this new regulatory requirement may be seen as an extension of DOT's equally unnecessary and legally questionable requirement that a foreign

^{1/} United, for example, offers single flight number services between Washington and Beijing via its Chicago gateway. United has not sought specific authority from China to serve the Washington-Chicago sector but operates this service by tacking its Chicago-Washington domestic route authority to its Chicago-Beijing foreign authority. United has an application pending at DOT to amend its Certificate of Public Convenience and Necessity for Route 246 to operate service between all points in the U.S. as gateways to and from points in China. See Docket OST-97-3020.

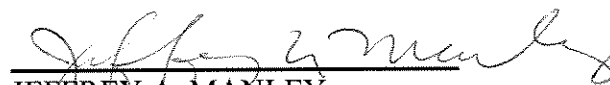
carrier operating between two points outside the U.S. requires an exemption from DOT to operate that service if it displays the designator code of a U.S. carrier. DOT has, as explained by United in its Final Comments (pp. 7-8), applied this “policy” to numerous small foreign carriers that operate no services to or from the U.S., have no intention of doing so, and possess no aircraft capable of doing so.

5. United again urges DOT to review its regulatory process and adopt policies and procedures that will avoid the recrudescence of regulatory sprawl exemplified by the new licensing requirements imposed on the Chinese carriers in the cases described above. The precedent of these orders will not be limited to this particular carrier or these particular markets or even carriers of this particular country. Other foreign carriers seeking advice as to what authority they require to operate services behind their homeland gateways may well follow the reinterpretation reflected in these cases. And, as noted above, that same interpretation may be applied reciprocally to U.S. carriers by foreign governments.

6. As United noted in its Final Comments in this proceeding, what is needed is a revision of the regulatory mindset that underlies actions such as that taken in these cases. The purpose of the deregulatory legislation enacted in the 1970’s was to limit governmental intervention in this industry to the minimum necessary to assure safe operations and a competitive marketplace as well as consistency with applicable international agreements. 49 U.S.C. §40101. The unnecessary extension of U.S. jurisdiction to behind-gateway operations of

foreign carriers in their homelands is directly contrary to the policy underlying the legislation to which DOT is supposed to look for guidance.

Respectfully submitted,



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